

**WSR 17-06-036**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed February 24, 2017, 8:29 a.m., effective February 24, 2017]

Effective Date of Rule: February 24, 2017.

Purpose: The department is amending these rules to implement the nursing facility methodology changes from SHB 1274, found in chapter 2, Laws of 2015 2nd sp. sess.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-540, 388-96-552, 388-96-553, 388-96-554, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-759, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784 and 388-96-786; and amending WAC 388-96-010, 388-96-022, 388-96-107, 388-96-205, 388-96-208, 388-96-211, 388-96-218, 388-96-505, 388-96-525, 388-96-534, 388-96-542, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-709, 388-96-710, 388-96-713, 388-96-758, 388-96-781, 388-96-782, and 388-96-901.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The statute has a deadline for the new rules of July 1, 2016. Permanent rules are currently under development with stakeholder involvement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 22, Repealed 24.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 22, Repealed 24.

Date Adopted: February 16, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-010 Definitions.** Unless the context indicates otherwise, the following definitions apply in this chapter.

**"Accounting"** means activities providing information, usually quantitative and often expressed in monetary units, for:

- (1) Decision making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

**"Accrual method of accounting"** is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

**"Administration and management"** means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

**"Allowable costs"** are documented costs that are necessary, ordinary, reasonable, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

~~("Allowable depreciation costs" are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in WAC 388-96-552.)~~

**"Assignment of contract"** means:

- (1) A new nursing facility licensee has elected to care for medicaid residents;
- (2) The department finds no good cause to object to continuing the medicaid contract at the facility; and
- (3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

**"Bad debts"** are amounts considered to be uncollectible from accounts and notes receivable.

**"Banked beds"** are beds removed from service under chapter 246-310 WAC.

**"Beneficial owner"** is:

- (1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares one or more of the following:
  - (a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; ~~((and))~~ or
  - (b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.
- (2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose of effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;
- (3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

- (a) Through the exercise of any option, warrant, or right;
- (b) Through the conversation of an ownership interest;

(c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in (3)(a), (b), or (c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledge agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledge agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged ownership interest; or

(ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

~~("Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.)~~

**"Building"** means the basic structure or shell of a facility and additions thereto. All allowable sections of a building are enclosed on all sides with a roof and are permanent.

**"Capital"** means the component of the rate that uses a fair market rental system to set a price per bed.

**"Cash method of accounting"** means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

**"Change of ownership"** means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether owner-

ship of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

**"Charity allowance"** means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

**"Component rate allocation(s)"** means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

**"Contract"** means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

**"Cost report"** means all schedules of a nursing facility's cost report submitted according to the department's instructions.

**"Courtesy allowances"** are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

**"Department"** means department of social and health services and its employees.

**"Direct care supplies (DCS)"** are those supplies:

(1) Used by staff providing direct care to residents;

(2) Consumed during a single accounting period; and

(3) Expensed in that accounting period. Supplies excluded from DCS include but are not limited to the following:

- (1) medical equipment (such as IV poles);
  - (2) Items covered by medicaid fee-for-service system;
- and

(3) Administrative supplies used by direct care staff (such as pencils, pens, paper, office supplies, etc).

**"Donated asset"** means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

- (1) Made even a nominal payment in acquiring the asset;
- or
- (2) Used donated funds to purchase the asset.

~~("Essential community provider" means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.)~~

**"Equity capital"** means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital defined as current assets minus current liabilities.

**"Fiscal year"** means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, "fiscal year" may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

**"Fixed equipment"** means attachments to buildings including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. Generally, fixed equipment is affixed to the building and not subject to transfer.

**"Gain on sale"** means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

**"Goodwill"** means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

**"Imprest fund"** means a fund which is regularly replenished in exactly the amount expended from it.

**"Intangible asset"** is an asset that lacks physical substance but possesses economic value.

**"Interest"** means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

**"Joint facility costs"** are any costs that benefit more than one facility, or one facility and any other entity.

~~("Large nonessential community providers" are not essential community providers and have more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.)~~

**"Leasehold improvements"** are betterments and additions made by the lessee to the leased property that become the property of the lessor after the expiration of the lease.

**"Movable equipment"** includes, but is not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of movable equipment are:

- (1) Capable of being moved as distinguished from fixed equipment;
- (2) A unit cost sufficient to justify ledger control;
- (3) Sufficient size and identity to make control feasible by means of identification tags; and
- (4) A minimum life of greater than one year.

**"Multiservice facility"** means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

**"Nonadministrative wages and benefits"** are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

**"Nonallowable costs"** are the same as "unallowable costs."

**"Nonrestricted funds"** are funds that are not restricted to a specific use by the donor, e.g., general operating funds.

**"Nursing facility occupancy percentage"** is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under chapter 70.38 RCW, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period.

**"Operating lease"** means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

**"Ownership interest"** means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

**"Per diem (per patient day or per resident day) costs"** means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

**"Prospective daily payment rate"** means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

**"Real property,"** whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

**"Recipient"** means a medicaid recipient.

**"Related care"** means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

- (1) The director of nursing services;
- (2) Nursing direction and supervision;
- (3) Activities and social services programs;
- (4) Medical and medical records specialists;
- (5) Consultation provided by:
  - (a) Medical directors; and
  - (b) Pharmacists.

**"Relative"** includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) Adopted child(~~((or))~~), adoptive parent, or adoptive sibling;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (6) Grandparent or grandchild; and
- (7) Uncle, aunt, nephew, niece, or cousin.

**"Related organization"** means an entity that is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

**"Renovations"** means the cost of the building, building improvements, leasehold improvements, and fixed equipment used to calculate a facility's age. In order to be used to calculate a facility's age, the cost of renovations in a calendar year must be \$2,000 or greater per licensed bed.

**"Restricted fund"** means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

~~("Small nonessential community providers" are not essential community providers and have sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.)~~

**"Start up costs"** are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

Start up costs do not include expenditures for capital assets.

**"Total rate allocation"** means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

**"Unallowable costs"** are costs that do not meet every test of an allowable cost.

**"Uniform chart of accounts"** are account titles identified by code numbers established by the department for contractors to use in reporting costs.

**"Vendor number"** means a number assigned to each contractor delivering care services to medical care recipients.

**Reviser's note:** The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-022 Due dates for cost reports.** (1) The contractor (~~((shall))~~) must submit annually a complete report of costs and financial conditions of the contractor prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) The department will review the contractor's costs and financial conditions in accordance with the methodology effective at the time the contractor incurred the costs.

(3) Not later than March 31st of each year, each contractor (~~((shall))~~) must submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

~~((3))~~ (4) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor (~~((shall))~~) must submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

~~((4))~~ (5) If the cost report is not properly completed or if it is not received by the due date established in subsection ~~((2))~~ (3) or ~~((3))~~ (4) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

~~((5))~~ (6) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection ~~((2))~~ (3) or ~~((3))~~ (4) of this section.

AMENDATORY SECTION (Amending WSR 89-01-095, filed 12/21/88)

**WAC 388-96-107 Requests for extensions.** (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests (~~((shall))~~) must:

(a) Be addressed to the manager, (~~((residential))~~) nursing facility rates program;

(b) State the circumstances prohibiting compliance with the report due date; and

(c) Be received by the department at least ten days prior to the due date of the report.

(2) The department may grant two extensions of up to thirty days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

(a) The circumstances were not foreseeable by the provider; and

(b) The circumstances were not avoidable by advance planning.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions.** (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, ~~((and costs of the building, land, land improvements, building improvements, and movable and fixed equipment))~~ building square footage, building improvements, leasehold improvements, fixed equipment, and age are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The contractor is in compliance with the direct care staffing requirements found in this chapter and in chapter 74.42 RCW;

(e) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

~~((e))~~ (f) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department ~~((shall))~~ must examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department ~~((shall))~~ must determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care ~~((, therapy care, and support services))~~ under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments ~~((shall))~~ must be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments ~~((shall be))~~ are subject to review under WAC 388-96-901 and 388-96-904.

(4) Audits of resident trust funds and receivables ~~((shall))~~ must be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor ~~((shall))~~ must:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) ~~((Prepare a reconciliation of the cost report with:~~

~~(i) Applicable federal income and federal and state payroll tax returns; and~~

~~(ii) The records for the period covered by the cost report.~~

~~((e)))~~ Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals ~~((shall))~~ must have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information; and

(c) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records ~~((shall))~~ must be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department ~~((shall))~~ must notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds.** (1) The methodology in subsections (2) through (6) of this section is effective for services provided on or before June 30, 2016.

(2) The department ~~((shall))~~ must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

~~((2))~~ (3) The contractor ~~((shall))~~ must make any payment owed the department as determined by reconciliation and/or settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations within sixty days after the department notifies the contractor of the amount owed.

~~((3))~~ (4) The department ~~((shall))~~ must pay the contractor within sixty days after it notifies the contractor of an underpayment.

~~((4))~~ (5) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest ~~((shall))~~ must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

~~((5))~~ (6) The department ~~((shall))~~ may withhold funds from the contractor's payment for services and ~~((shall))~~ may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

(7) The methodology in subsections (8) through (12) of this section is effective for services provided on or after July 1, 2016.

(8) The department must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(9) The contractor must make any payment owed the department as determined by either reconciliation, settlement, or both at the lower of cost or rate in the direct care component rate allocation within sixty days after the department notifies the contractor of the amount owed.

(10) The department must pay the contractor within sixty days after it notifies the contractor of an underpayment.

(11) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(12) The department may withhold funds from the contractor's payment for services and may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination must delay recovery from the contractor or payment to the contractor.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates.**

(1) The methodology in subsections (2) through (6) of this section is effective for services provided on or before June 30, 2016.

(2) Contractors ~~((shall))~~ must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component

rate during the cost report year on a per-resident day basis. The department ~~((shall))~~ must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

~~((2))~~ (3) Contractors ~~((shall not be))~~ are not required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

~~((3))~~ (4) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection ~~((4))~~ (5) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" ~~((shall))~~ must be defined by federal survey regulations.

~~((4))~~ (5) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, ~~((shall))~~ must be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center ~~((shall))~~ must be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection ~~((3))~~ (4) of this section, ~~((shall))~~ must be calculated and applied after all shifting is completed.

~~((5))~~ (6) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW ~~((shall))~~ represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(7) The methodology in subsections (8) through (11) of this section is effective for services provided on or after July 1, 2016.

(8) Contractors must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(9) Contractors are not required to refund payments made in the indirect care, capital, and quality enhancement component rates in excess of the adjusted costs of providing services corresponding to these components.

(10) The facility will return to the department any overpayment amounts in the direct care rate component that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's direct care component rate, however facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care component rate. The terms "not in substantial compliance" and "substandard quality of care" must be defined by federal survey regulations.

(11) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

**AMENDATORY SECTION** (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-218 Proposed, preliminary, and final settlements.** (1) The methodology in subsections (2) through (14) of this section is effective for services provided on or before June 30, 2016.

(2) For each component rate, the department ~~(shall)~~ must calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter and chapter 74.46 RCW.

~~((2))~~ (3) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor ~~(shall)~~ must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor ~~(shall)~~ must take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

~~((a))~~ (4) The department will

(i) review the proposed preliminary settlement report for accuracy and

~~((ii))~~ accept or reject the ~~(proposal of the)~~ contractor's proposal. If accepted, the proposed preliminary settlement report ~~(shall)~~ must become the preliminary settlement report. If rejected, the department ~~(shall)~~ must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

~~((b))~~ (5) When the department receives the proposed preliminary settlement report

(i) by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date

~~(i)~~ (A) When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

~~((c))~~ In its discretion, the department may designate a date later than the dates specified in this subsection ~~((2)(b)(i) and (ii) of this section)~~ to issue preliminary settlements.

~~((d))~~ (6) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ~~(shall)~~ must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement ~~(shall)~~ must be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and ~~(shall)~~ must not encompass rate or audit issues.

~~((e))~~ (7) The department ~~(shall)~~ must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

~~((f))~~ (8) The department ~~(shall)~~ must prepare a final settlement by component payment rate allocation and ~~(shall)~~ must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department ~~(shall)~~ must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department ~~(shall)~~ must compare:

~~((g))~~ (a) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

~~((h))~~ (b) Audited allowable costs for the reporting period; or

~~((i))~~ (c) Reported costs for the nonaudited reporting period.

~~((j))~~ (9) A contractor ~~(shall have)~~ has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ~~(shall)~~ must not review a final settlement report. Any administrative review of a final settlement ~~(shall)~~ must be

limited to calculation of the settlement, the application of settlement principles and rules, or both, and ~~((shall))~~ must not encompass rate or audit issues.

~~((e))~~ (10) The department ~~((shall))~~ may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

~~((4(a)))~~ (11) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

~~((b))~~ (12) The nursing facility contractor ~~((shall))~~ must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department ~~((shall))~~ must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt ~~((shall))~~ must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

~~((e))~~ (13) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

~~((5))~~ (14) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of WAC 388-96-211, the following rules ~~((shall))~~ apply:

(a) Federal or state survey officials ~~((shall))~~ must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status ~~((shall))~~ must be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture ~~((shall))~~ must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture ~~((shall))~~ must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

(15) The methodology in subsections (16) through (28) of this section is effective for services provided on or after July 1, 2016.

(16) For each component rate, the department must calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter and chapter 74.46 RCW.

(17) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor must take into account all retained savings, and upper limits to rates on a cost center basis.

(18) The department will review the proposed preliminary settlement report for accuracy and accept or reject the contractor's proposal. If accepted, the proposed preliminary settlement report must become the preliminary settlement report. If rejected, the department must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(19) When the department receives the proposed preliminary settlement report by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date. When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received. In its discretion, the department may designate a date later than the dates specified in this subsection to issue preliminary settlements.

(20) A contractor has twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement must be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and must not encompass rate or audit issues.

(21) The department must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(22) The department must prepare a final settlement by component payment rate allocation and must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department must compare:

(a) The payment rates it paid the contractor for the facility in question during the report period, weighted by the num-

ber of allowable resident days reported for the period each rate was in effect to the contractor's:

- (b) Audited allowable costs for the reporting period; or
- (c) Reported costs for the nonaudited reporting period.

(23) A contractor has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department must not review a final settlement report. Any administrative review of a final settlement must be limited to calculation of the settlement, the application of settlement principles and rules, or both, and must not encompass rate or audit issues.

(24) The department may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medic-aid recipient days.

(25) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(26) The nursing facility contractor must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

(27) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(28) In determining whether a facility has forfeited unused rate funds in its direct care component rate under authority of WAC 388-96-211, the following rules apply:

(a) Federal or state survey officials must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status must be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the

settlement period. Also, forfeiture must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-505 Offset of miscellaneous revenues.**

(1) The methodology in subsections (2) through (5) of this section is effective for services provided on or before June 30, 2016.

(2) The contractor (~~(shall)~~) must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (e.g., purchase discounts, refunds of allowable costs or rebates) other than through the contractor's normal billing for care services; except, the department (~~(shall)~~) must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

~~((2))~~ (3) The contractor (~~(shall)~~) must reduce allowable costs for hold-bed revenue in the support services, operations and property rate components only. In the support services rate component, the amount of reduction (~~(shall)~~) must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days. In the operations rate component, the amount of the reduction shall be determined by dividing a facility's allowable operation costs by total adjusted patient days and multiplying the result by total hold-room days. In the property rate component, the amount of reduction (~~(shall)~~) must be determined by dividing allowable property costs by the total adjusted patient days and multiplying the result by total hold-room days.

~~((3))~~ (4) Where goods or services are sold, the amount of the reduction (~~(shall be)~~) is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it (~~(shall be)~~) is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs or rebates are received, the amount of the reduction (~~(shall be)~~) is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, (~~(shall)~~) must be offset against allowable costs in the year the contractor actually receives the benefits.

~~((4))~~ (5) Only allowable costs (~~(shall)~~) may be recovered under this section. Costs allocable to activities or services not included in nursing facility services, e.g., costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services, are nonallowable costs.

(6) The methodology in subsections (7) through (10) of this section is effective for services provided on or after July 1, 2016.

(7) The contractor must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (e.g., purchase discounts, refunds of allowable costs or rebates) other than through the contractor's normal billing for care services; except, the department must not deduct from the allowable costs of a

nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(8) The contractor must reduce allowable costs for hold-bed revenue in the indirect care rate component only. The amount of reduction must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days.

(9) Where goods or services are sold, the amount of the reduction is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs or rebates are received, the amount of the reduction is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, must be offset against allowable costs in the year the contractor actually receives the benefits.

(10) Only allowable costs may be recovered under this section. Costs allocable to activities or services not included in nursing facility services, e.g., costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services, are nonallowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-525 Education and training.** (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs. Cost of training for which the nursing facility is reimbursed outside the payment rate is an unallowable cost.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. Expenses of training programs for other nonemployees will not be allowable costs.

(3) Expenses for travel, lodging, and meals associated with education and training ~~((in the states of Idaho, Oregon, and Washington and the province of British Columbia))~~ are allowable if the expenses meet the requirements of this chapter.

~~(4) ((Except travel, lodging, and meal expenses, education and training expenses at sites outside of the states of Idaho, Oregon, and Washington and the province of British Columbia are allowable costs if the expenses meet the requirements of this chapter.~~

~~(5))~~ Costs designated by this section as allowable ~~((shall be))~~ are subject to any applicable cost center limit established by this chapter.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-534 Joint cost allocation disclosure (JCAD).** (1) The contractor ~~((shall))~~ must disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor ~~((shall))~~ must demonstrate in such disclosure:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

~~(3) ((The contractor shall make such disclosure not later than September 30th for the following year; except,))~~ Upon receipt of a disclosure, the department must review the joint cost allocation disclosure (JCAD) and either approve or deny the disclosure. Once a JCAD is submitted and approved, it is valid until changed or amended.

~~(4) A~~ A new contractor ~~((shall))~~ must submit the first year's disclosure together with the submissions required by WAC 388-96-026.

~~(5)~~ Within this section, the meaning of the:

(a) "Effective date" is the date the department will recognize allocation per an approved JCAD; and

(b) "Implementation date" is the date the facility will begin or began incurring joint facility costs or the allocation of joint costs has changed.

~~((4) The department shall approve or reject the JCAD not later than December 31 of each year for all JCADs received by September 30th. The effective date of an approved JCAD received:~~

~~(a) By September 30th is January 1st.~~

~~(b) After September 30th shall be ninety days from the date the JCAD was received by the department.~~

~~(5))~~ (6) The contractor ~~((shall))~~ must submit to the department for approval an amendment or revision to an approved JCAD at least thirty days prior to the implementation date of the amendment or revision. For amendments or revisions received less than thirty days before the implementation date, the effective date of approval will be thirty days from the date the JCAD is received by the department.

~~((6))~~ (7) When a contractor, who is not currently incurring joint facility costs, begins to incur joint facility costs during the calendar year, the contractor ~~((shall))~~ must provide the information required in subsections (1) and (2) of this section at least ninety days prior to the implementation date. If the JCAD is not received ninety days before the implementation date, the effective date of the approval will be ninety days from the date the JCAD is received by the department.

~~((7))~~ (8) Joint facility costs not disclosed, allocated, and reported in conformity with this section are unallowable costs. Joint facility costs incurred before the effective dates ~~((of subsections (4), (5), and (6) of this section))~~ are unallowable. Costs disclosed, allocated, and reported in conformity with a department-approved JCAD must undergo review and be determined allowable costs for the purposes of rate setting and audit.

**Reviser's note:** The spelling errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-542 Home office or central office.** (1) ~~((When calculating the median bid on home and central office~~

costs and determining which home and central office costs to test against the median lid.) The department will include all allowable, reported home/central office costs including all costs that are ~~((nonduplicative;))~~ documented, ordinary, reasonable, necessary, and related to the provision of medical and personal care services to authorized patients.

~~((2))~~ ~~((a))~~ Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, ~~((shall))~~ must not be included in ~~((net invested funds or in))~~ the calculation of ~~((property payment))~~ the capital component for the nursing facility except as permissible under WAC 388-96-915.

~~((b))~~ ~~((3))~~ The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.

~~((e))~~ ~~((4))~~ The allocated costs ~~((of (b) of this))~~ in subsection (3) of this section may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

~~((3))~~ ~~((5))~~ Home office or central office costs must be allocated and reported in conformity with the department-approved JCAD methodology as required by WAC 388-96-534.

~~((4))~~ ~~Home office or central office costs are subject to the limitation specified in WAC 388-96-585.)~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-556 Initial cost of operation.** (1) The necessary ~~((and))~~, ordinary, and reasonable one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility ~~((shall be))~~ are allowable costs. These expenses ~~((shall be))~~ are limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs ~~((shall))~~ include, but ~~((not be))~~ are not limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training ~~((except, that they shall exclude))~~, Start-up costs do not include expenditures for capital assets. ~~((These))~~ Start-up costs ~~((will be))~~ are allowable in the ~~((operations))~~ indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the ~~((operations))~~ indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

~~((4))~~ ~~Interest expense and loan origination fees relating to construction of a facility incurred during the period of con-~~

struction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.)

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-560 Land, improvements**~~((—Depreciation. Land is not depreciable. The cost of))~~ Land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading ~~((of a nondepreciable nature))~~, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-580 Operating leases of office equipment.** (1) Rental costs of office equipment under arm's-length operating leases ~~((shall be))~~ are allowable to the extent such costs are necessary, ordinary, and related to patient care. (2) The department ~~((shall))~~ must pay office equipment rental costs in the ~~((operations))~~ indirect component rate allocation. Office equipment may include items typically used in administrative or clerical functions such as telephones, copy machines, desks and chairs, calculators and adding machines, file cabinets, typewriters, and computers.

~~((3))~~ ~~The department shall not pay for depreciation of leased office equipment.)~~

AMENDATORY SECTION (Amending WSR 15-09-025, filed 4/7/15, effective 5/8/15)

**WAC 388-96-585 Unallowable costs.** (1) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;

(c) Costs associated with a capital expenditure ~~((subject to section 1122 approval (part 100, Title 42 C.F.R.)))~~ if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts ~~((shall))~~ consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future~~((:));~~

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions~~((excluding dues;))~~ to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. This does not include membership dues;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) ~~((Televisions acquired prior to July 1, 2001;~~

~~((v)))~~ Federal, state, and other income taxes;

~~((w)))~~ (v) Costs of special care services except where authorized by the department;

~~((x)))~~ (w) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

~~((y)))~~ (x) Expenses of profit-sharing plans;

~~((z)))~~ (y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

~~((aa)))~~ (z) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

~~((ab)))~~ (aa) All expenses of maintaining professional licenses or membership in professional organizations;

~~((ac)))~~ (bb) Costs related to agreements not to compete;

~~((ad)))~~ (cc) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

~~((ae)))~~ (dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

~~((af)))~~ (ee) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

~~((ag)))~~ (ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

~~((ah)))~~ (gg) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

~~((ai)))~~ (hh) All rental or lease costs other than those provided for in WAC 388-96-580;

~~((aj)))~~ (ii) Postsurvey charges incurred by the facility ~~((as a result of subsequent inspections))~~ under ~~((RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year))~~ RCW 18.51.060;

~~((ak)))~~ (jj) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

~~((al)))~~ (kk) For all partial or whole rate periods after July 17, 1984, costs of ~~((land and))~~ depreciable assets that cannot

be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

~~((mm))~~ (ll) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

~~((nn))~~ (mm) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

~~((oo))~~ (nn) Travel expenses that are not necessary, ordinary, and related to resident care;

~~((pp))~~ (oo) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

~~((qq))~~ ~~Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;~~

~~((rr))~~ (pp) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

~~((ss))~~ (qq) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

~~((tt))~~ (rr) Costs and fees associated with filing a petition for bankruptcy;

~~((uu))~~ (ss) All advertising or promotional costs, except reasonable costs of help wanted advertising;

~~((vv))~~ (tt) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

~~((ww))~~ ~~All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;~~

~~((xx))~~ (uu) Tax expenses that a nursing facility has never incurred;

~~((yy))~~ (vv) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

~~((zz))~~ (ww) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department ~~((shall be))~~ are unallowable; and

~~((aaa))~~ (xx) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment)~~((-))~~;

(yy) Costs related to a nursing assistant certified training program;

(zz) Effective July 1, 2012, payments made relating to the safety net assessment; and

(aaa) Building renovations, building improvements, or leasehold improvements that require preapproval from the department of health and were not preapproved.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds ~~((by means other than "banking" pursuant to chapter 70.38 RCW))~~.** (1) For the purpose of minimum occupancy capital calculation banked beds are included in the number of licensed beds. The department will recalculate a contractor's prospective medicaid payment rate when the contractor permanently reduces the number of its licensed beds and:

(a) Provides a copy of the new bed license, if issued, documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any, and the letter from the department of health (DOH) confirming the number of beds relinquished and the date they were relinquished; and

(b) Requests a rate revision.

(2) The department will revise medicaid rates in accordance with this chapter and chapter 74.46 RCW using the facility's decreased licensed bed capacity to calculate minimum occupancy for rate setting.

(3)~~((a))~~ When the new license is effective the first day of the month or when the DOH letter confirms the beds were relinquished the first day of the month, the revised prospective payment rate will be effective the first day of the month~~((-))~~;

~~((b))~~ (4) When the new license is effective after the first day of the month or when the DOH letter confirms the beds were relinquished after the first day of the month, the revised prospective payment rate will be effective the first day of the month following the month the new license was effective or the DOH letter confirmed beds were relinquished after the first day of the month.

~~((a))~~ (5) The department will recalculate a nursing facility's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds including banked bed times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being recalculated is based.

~~((b))~~ ~~For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:~~

~~(i) Essential community providers—Eighty-five percent.~~

~~(ii) Small nonessential community providers—Ninety percent.~~

~~(iii) Large nonessential community providers—Ninety-two percent.~~

~~(e)~~ ~~For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.~~

(5)) (6) The revised prospective medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

**WAC 388-96-710 Prospective payment rate for new contractors.** (1) The department will establish an initial prospective medicaid payment rate for a new contractor as defined under WAC 388-96-026 within sixty days following the new contractor's application and approval for a license to operate the facility under chapter 18.51 RCW. The rate will take effect as of the effective date of the contract, except as provided in this section, and will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth.

(2) ~~((Except for quarterly updates per RCW 74.46.501(7)(e), the rate established for a new contractor as defined in WAC 388-96-026 (1)(a) or (b) will remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate thereafter will be cost rebased only as provided in this chapter and chapter 74.46 RCW.~~

(3)) To set the initial prospective medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department will:

(a) Determine ~~((whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency))~~ the direct care rate by multiplying the industry median by the appropriate county wage index by the facility's medicaid average case mix index (MACMI) and if the facility does not have a MACMI, the department will use the facility industry MACMI;

(b) ~~((Select all nursing facilities from the department's records of all the current medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained))~~ Assign the new provider the indirect price based rate;

(c) ~~((Based on the information for the nursing facilities selected under subsection (3)(b) of this section and available to the department on the day the new contractor began participating in the medicaid payment rate system at the facility, rank from the highest to the lowest the component rate allocation in direct care, therapy care, support services, and operations cost centers and based on this ranking:~~

(i) Determine the middle of the ranking and then identify the rate immediately above the median for each cost center identified in subsection (3)(c) of this section. The rate imme-

diately above the median will be known as the "selected rate" for each cost center;

(ii) Set the new contractor's nursing facility component rate allocation for therapy care, support services, and operations at the "selected rate";

(iii) ~~Set the direct care rate using data from the direct care "selected" rate facility identified in (c) of this subsection as follows:~~

(A) The cost per case mix unit will be the rate base allowable case mixed direct care cost per patient day for the direct care "selected" rate facility, whether or not that facility is held harmless under WAC 388-96-728 and 388-96-729, divided by the facility average case mix index per WAC 388-96-741;

(B) The cost per case mix unit determined under (c)(iii)(A) of this subsection will be multiplied by the medicaid average case mix index per WAC 388-96-740. The product will be the new contractor's direct care rate under case mix; and

(C) ~~The department will not apply RCW 74.46.506 (5)(k) to any direct care rate established under subsection (5)(e) or (f) of this section. When the department establishes a new contractor's direct care rate under subsection (5)(e) or (f) of this section, the new contractor is not eligible to be paid by a "hold harmless" rate as determined under RCW 74.46.506 (5)(k);~~

(iv) Set the property rate in accordance with the provisions of this chapter and chapter 74.46 RCW; and

(v) Set the financing allowance and variable return component rate allocations in accordance with the provisions of this chapter and chapter 74.46 RCW. In computing the variable return component rate allocation, the department will use for direct care, therapy care, support services and operations rate allocations those set pursuant to subsection (3)(c)(i), (ii) and (iii) of this section.

(d) Any subsequent revisions to the rate component allocations of the sample members will not impact a "selected rate" component allocation of the initial prospective rate established for the new contractor under this subsection.

(4) For the WAC 388-96-026 (1)(a) or (b) new contractor, the department will establish rate component allocations for:

(a) Direct care, therapy care, support services and operations based on the "selected rates" as determined under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program;

(b) Property in accordance with the provisions of this chapter and chapter 74.46 RCW using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received;

(c) Variable return in accordance with the provisions of this chapter and chapter 74.46 RCW using the "selected

rates" established under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(d) Financing allowance using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component allocation will remain zero until the information is received.

(5) The initial prospective payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) will be established under subsections (3) and (4) of this section. If the WAC 388-96-026 (1)(a) or (b) contractor's initial rate is set:

(a) Between July 1, 2000 and June 30, 2001, the department will set the new contractor's rates for:

(i) July 1, 2001 using the July 1, 2001 rates for direct care, therapy care, support services, and operations of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(a)(i) of this section;

(ii) July 1, 2002 rate using 2001 cost report data; and

(iii) All July 1 rates following July 1, 2002 in accordance with this chapter and chapter 74.46 RCW;

(b) Between July 1, 2001, and June 30, 2002, the department will set the new contractor's rates for:

(i) July 1, 2002 using July 1, 2002 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(b)(i) of this section;

(ii) July 1, 2003 rate by rebasing using 2002 cost report data in accordance with this chapter and chapter 74.46 RCW; and

(iii) All July 1 rates following July 1, 2003 in accordance with this chapter and chapter 74.46 RCW; or

(c) Between July 1, 2002, and June 30, 2003, the department will set the contractor's rates for:

(i) July 1, 2003 using July 1, 2003 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsection (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(c)(i) of this section;

(ii) July 1, 2004 by rebasing using 2003 cost report data; and

(iii) All July 1 rates following July 1, 2004 in accordance with this chapter and chapter 74.46 RCW.

(6) For the WAC 388-96-026 (1)(c) new contractor, the initial prospective payment rate will be the last prospective payment rate the department paid to the medicare contractor operating the nursing facility immediately prior to the effective date of the new medicare contract or assignment. If the WAC 388-96-026 (1)(c) contractor's initial rate is set:

(a) Between October 1, 1998 and June 30, 1999, the department will not rebase the contractor's rate for:

(i) July 1, 1999; and

(ii) July 1, 2000;

(b) Between July 1, 1999 and June 30, 2000, the department will for:

(i) July 1, 2000 not rebase the new contractor's rate;

(ii) July 1, 2001 rebase the new contractor's rate using twelve months of cost report data derived from the old contractor's and the new contractor's 1999 cost reports; and

(iii) July 1, 2002 not rebase the new contractor's rate; and

(iv) July 1, 2003 not rebase the new contractor's rate;

(c) Between July 1, 2000 and June 30, 2001, the department will for:

(i) July 1, 2001 rebase the new contractor's rate using the old contractor's 1999 twelve month cost report;

(ii) July 1, 2002 not rebase the new contractor's rate;

(iii) July 1, 2003 not rebase the new contractor's rate; or

(d) Between July 1, 2001 and June 30, 2002, the department will for:

(i) July 1, 2002 not rebase the new contractor's rate;

(ii) July 1, 2003 not rebase the new contractor's rate; and

(iii) July 1, 2004 rebase the new contractor's rate using the new contractor's 2002 cost report containing at least six

month's data.

(7)) Determine a capital rate once the facility has submitted square footage and age information and the department accepts it; and

(d) Use the facility's available centers for medicare and medicare date for the three quarter period currently being measured by the department to determine a quality enhancement rate and if no data is available, the department will not pay a quality enhancement.

(3) A prospective payment rate set for all new contractors will be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

((8) For a WAC 388-96-026 (1)(a), (b) or (c) new contractor, the medicare case mix index and facility average case mix index will be determined in accordance with this chapter and chapter 74.46 RCW.)

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

**WAC 388-96-713 Rate determination.** (1) Each nursing facility's medicare payment rate for services provided to medical care recipients will be determined, adjusted and updated prospectively as provided in this chapter and in chapter 74.46 RCW. The department will calculate any limit, ((lid;)) and/or median only when it rebases each nursing facil-

ity's July 1<sup>st</sup> medicaid payment rate in accordance with chapter 74.46 RCW and this chapter.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Contractors submitting correct and complete cost reports by March 31<sup>st</sup>, ~~((shall))~~ must be notified of their rates by July 1<sup>st</sup>, unless circumstances beyond the control of the department interfere.

(4) In setting rates, the department will use the greater of actual days from the cost report period on which the rate is based or days calculated at minimum occupancy pursuant to chapter 74.46 RCW.

~~((5) Adjusted cost report data from 1999 shall be used for July 1, 2001 through June 30, 2005 direct care, therapy care, support services, and operations component rate allocations:))~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-758 Add-on for low-wage workers.** (1)

The department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on pursuant to subsection (7) of this section. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2008, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;
- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that receives a low-wage add-on ~~((shall))~~ must report to the department its expenditure of that add-on by:

- (a) Completing Cost Report Schedule L 1; and
- (b) Returning it to the department by January 31<sup>st</sup>.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process

but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31<sup>st</sup> indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1<sup>st</sup>. For nursing home contractors that do not respond by May 31<sup>st</sup> indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1<sup>st</sup>.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-781 Exceptional care rate add-on—Covered medicaid residents.** A nursing facility (NF) may receive an increase in its direct care ~~((and/or therapy component))~~ rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to the NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care and/or therapy payment;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS ~~((2))~~ 3.0 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care ~~((and/or therapy))~~ payment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-782 Exceptional (~~(therapy care and exceptional)~~) direct care—Payment.** (1) For WAC 388-96-781(1) residents, the department will pay the Oregon medicare rate.

(2) For WAC 388-96-781 (4), (5)~~(and)~~, (6), and residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

~~((3)(a) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care shall be for rate setting, settlement, and other purposes deemed appropriate by the department; or~~

~~(b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid.)~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-901 Disputes.** (1) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor (~~(shall)~~) must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility; or
- (v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;
- (ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which (~~(shall)~~) must be limited to separate administrative review under the provisions of WAC 388-96-905;
- (iii) (~~(Quarterly and)~~) Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;
- (iv) Actions taken under exceptional direct (~~(and therapy)~~) care program codified at WAC 388-96-781 and 388-96-782;
- (v) Actions taken under WAC 388-96-218 (2)(c)~~(, and~~
- ~~(vi) Actions taken under WAC 388-96-786).~~

(2) The administrative review process prescribed in WAC 388-96-904 (~~(shall)~~) must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer (~~(shall)~~) must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a(-)(a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and (~~(disability services)~~) long-term support administration(~~(, for example, entitlement to or payment for durable medical equipment or other services)~~).

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor (~~(may)~~) must not use this section or WAC 388-96-904 for such purposes. This prohibition (~~(shall apply)~~) applies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

**Reviser's note:** The unnecessary strikethrough in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### NEW SECTION

**WAC 388-96-915 Capital component—Square footage.** (1) Allowable nursing home square footage is the external dimensions of the space building utilized and licensed as a nursing home less all unallowable square footage as outlined in subsection (2) of this section. Allowable nursing home square footage includes the following:

(a) All necessary, ordinary, and reasonable space on the campus or adjacent to the campus utilized by the residents and staff of the nursing home including in administrative and support capacities; and

(b) Basements to the extent they are utilized for administrative or support functions including the storage of equipment and records.

(2) Unallowable nursing home square footage includes, but is not limited to:

- (a) Courtyards or other areas not surrounded by four walls and a contiguous roof;
- (b) Patios and decks; and
- (c) Off-site storage space.

(3) Off-site administrative square footage is allowable to the extent it is:

(a) Allocated in accordance with an approved joint cost allocation disclosure as outlined in WAC 388-96-534;

(b) Not otherwise unallowable under subsection (2) of this section; and

(c) Used for administrative purposes.

(4) Off-site administrative square footage is allowable up to ten percent of the combined total allowable square footage. Any square footage over ten percent of the combined total allowable square footage is unallowable.

(5) In order to be allowable, all space must be identified on a site plan, blueprint, or county assessment identifying the gross external square footage.

#### NEW SECTION

##### **WAC 388-96-916 Capital component—Facility age.**

(1) Facility age is based on the completion date of the original structure as adjusted for renovations as defined in WAC 388-96-020.

(2) For the cost report period ending December 31, 2014, facility age will be calculated by identifying the square footage and date placed into service for the original structure and renovations.

(3) Beginning with rates paid on July 1, 2016, the average age of a facility is the age as calculated on the calendar year 2014 cost report adjusted by renovations reported in 2015.

(4) Beginning with rates paid on July 1, 2017, the average age of a facility will be adjusted on July 1st of each year based on renovations from the prior calendar year cost reporting period.

(5) Average age is calculated in accordance with RCW 74.46.561 (5)(e).

#### NEW SECTION

**WAC 388-96-917 Direct care—County wage information.** (1) The department must calculate a county wide wage index each rebase year by utilizing the most recent average wage data available from the federal bureau of labor statistics for registered nurses, licensed practical nurses, and certified nursing assistants.

(2) For each county, the department must calculate an average combined wage for all three disciplines based on the percentage of total wages by discipline from the prior year cost report. Each wage must be multiplied by the relative utilization percentage for that discipline. The total of all three disciplines is the average wage in that county.

(3) The department must calculate the statewide average combined wage for all three disciplines based on the average percentage of total wages by discipline from the prior year cost report.

(4) The county index is determined by dividing the county average wage in a given county by the statewide average wage.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-96-540 Will the department allow the cost of an administrator-in-training?
- WAC 388-96-552 Depreciable assets.
- WAC 388-96-553 Capitalization.
- WAC 388-96-554 Expensing.
- WAC 388-96-558 Depreciation expense.
- WAC 388-96-559 Cost basis of land and depreciation base.
- WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets.
- WAC 388-96-562 Depreciable assets—Disposed—Retired.
- WAC 388-96-564 Methods of depreciation.
- WAC 388-96-565 Lives.
- WAC 388-96-572 Handling of gains and losses upon retirement of depreciable assets—Other periods.
- WAC 388-96-574 New or replacement construction—Property tax increases.
- WAC 388-96-708 Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate.
- WAC 388-96-744 How will the department set the therapy care rate and determine the median cost limit per unit of therapy?
- WAC 388-96-746 How much therapy consultant expense for each therapy type will the department allow to be added to the total allowable one-on-one therapy expense?
- WAC 388-96-747 Constructed, remodeled or expanded facilities.
- WAC 388-96-748 Financing allowance component rate allocation.
- WAC 388-96-759 Standards for low-wage workers add-on.
- WAC 388-96-762 Allowable land.
- WAC 388-96-767 Appraisal values.
- WAC 388-96-776 Add-ons to the property and financing allowance payment rate—Capital improvements.

- WAC 388-96-783 Certificate of capital authorization (CCA).  
 WAC 388-96-784 Expense for construction interest.  
 WAC 388-96-786 Pay for performance add-on.

**WSR 17-07-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-40—Filed March 1, 2017, 1:57 p.m., effective March 1, 2017, 1:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for coastal crab.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500V; and amending WAC 220-52-045.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open the northern five miles of the Quinault Special Management Area (SMA) and creates a new secondary SMA with a new northern boundary line. It also implements a two hundred pot limit for the first thirty days in the newly opened area. Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. SMAs are listed in accordance with state/tribal management agreements. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 1, 2017.

J. W. Unsworth  
 Director

NEW SECTION

**WAC 220-52-04500W Commercial crab fishery—Seasons and areas—Coastal.** Notwithstanding the provisions of WAC 220-52-045, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from and the U.S./Canada border to the WA/OR border (46°15.00) and Willapa Bay is open.

(2) For the purposes of this section, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 A.M., March 4, 2017, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

- Northeast Corner 47°24.50 N. Lat. 124°20.00 W. Lon. (Split Rock):
- Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
- Southeast Corner 47°08.00 N. Lat. 124°11.20 W. Lon. (Copalis River):

(4) It is unlawful for a vessel to use more than 200 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve from 8:00 a.m. March 4, 2017, until 8:00 a.m. April 3, 2017. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to: Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

(5) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner 47°58.00' N. Lat. 124°40.40' W. Lon. (Cape Johnson):
- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- Southeast Corner 47°40.50' N. Lat. 124°24.43' W. Lon. (Destruction Island):

(6) The Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- Northeast Corner: Tatoosh Island
- Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.

- Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.
- Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(7) It is unlawful for a vessel to use more than 200 pots in the Makah SMA until 8:00 A.M. March 16, 2017. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

(8) All other provisions of the permanent rule remain in effect.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04500V Coastal crab seasons (17-27)

**WSR 17-07-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-38—Filed March 1, 2017, 4:47 p.m., effective March 1, 2017,  
4:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100L and 220-32-05100M; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Extends the treaty winter fishery in The Dalles and John Day pools and sets the winter gill-net season in the Bonneville Pool. Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 31, February 21, and March 1, 2017. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 2.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 1, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective at 6:01 March 1, 2017 until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Area: SMCRA 1F (Bonneville Pool):

(a) Season: 6:00 AM March 6 through 6:00 p.m. March 21, 2017.

(b) Gear: Gill nets with no mesh restriction.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(2) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

(a) Season: Immediately through 6:00 p.m. March 04, 2017

(b) Gear: Gill nets with no mesh restriction.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) Open Areas: SMCRA 1F, 1G, and 1H (Zone 6):

(a) Season: Immediately through 6:00 p.m. March 21, 2017.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence if harvested before March 6. Live release of all oversize and under-size sturgeon is required.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Fish caught during the open period may be sold after the period concludes.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 1, 2017:

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam. (17-35)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2017:

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. (17-42)

**WSR 17-07-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-42—Filed March 3, 2017, 2:36 p.m., effective March 3, 2017, 2:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500G; and amending WAC 220-56-235.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is necessary to clarify removing the lingcod minimum size limit in Marine Areas 1 through 3 and Marine Area 4 (west of the Bonilla-Tatoosh line) which was originally filed in WSR 17-06-008. Removing the minimum size limit provides additional angling opportunity. These rules conform with changes adopted by the Pacific Fishery Management Council. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 3, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

##### **WAC 220-56-23500H Possession limits—Bottomfish.**

Notwithstanding the provisions of WAC 220-56-235, effective immediately until further notice, it is unlawful to violate the following provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) Coastal (Marine Areas 1 through 3 and Marine Area 4 (west of the Bonilla-Tatoosh line): Limit 9 fish total, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod: 2 fish limit with no minimum size in Marine Areas 1 through 3 and Marine Area 4 (west of the Bonilla-Tatoosh line).

(b) Rockfish: 7 fish in aggregate which can include up to one canary rockfish in Marine Areas 1 and 2. The possession limit for yelloweye rockfish is 0.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-23500G Possession limits—Bottomfish. (17-31)

**WSR 17-07-010  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-43—Filed March 3, 2017, 2:36 p.m., effective March 3, 2017, 2:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational harvest rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000C; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open razor clam beaches for recreational harvest because survey results show that adequate clams are available for harvest in Razor Clam Areas 3, 4, and 5 which will provide for recreational harvest opportunity. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 3, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-36000C Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. March 7, 2017 through 11:59 p.m. March 13, 2017, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. March 10, 2017 through 11:59 p.m. March 10, 2017 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(3) Effective 12:01 p.m. March 12, 2017 through 11:59 p.m. March 12, 2017 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. only. Effective 12:01 p.m.

(4) March 9, 2017 through 11:59 p.m. March 9, 2017 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(5) Effective 12:01 p.m. March 11, 2017 through 11:59 p.m. March 11, 2017 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(6) It is unlawful to dig for razor clams at any time in the Twin Harbors or Copalis Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 14, 2017:

WAC 220-56-360000C Razor clams—Areas and seasons.

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-56-360000C is probably intended to be WAC 220-56-36000C.

**WSR 17-07-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-41—Filed March 8, 2017, 9:14 a.m., effective March 8, 2017,  
9:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for possession and delivery for recreational Canadian-origin salmon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-156.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to clarify the process for anglers who catch Canadian-origin salmon and land their catch in Washington state ports which will make it easier for anglers to obtain a valid Canadian custom clearance number. The department of fish and wildlife has filed a preproposal statement to begin the permanent rule process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-56-15600B Possession and delivery of Canadian-origin salmon.** Notwithstanding the provisions of WAC 220-56-156, effective immediately until further notice, Canadian-origin salmon restrictions: It is unlawful to possess in marine waters or deliver into Washington any fresh salmon taken for personal use from Canadian waters unless such salmon meet current salmon regulations for the waters of the applicable department of fish and wildlife catch record card area. However, if the vessel operator has a valid Canadian customs clearance number obtained once they are in Canadian waters fishers aboard the vessel may deliver Canadian-origin salmon into Washington that are lawfully taken in Canada, regardless of whether the salmon meet the current salmon regulations for the area where delivered.

**WSR 17-07-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-45—Filed March 8, 2017, 1:56 p.m., effective March 9, 2017,  
6:30 p.m.]

Effective Date of Rule: March 9, 2017, 6:30 p.m.

Purpose: Amend fishing rules for the Puget Sound commercial crab fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000D; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule will keep the commercial crab harvest open in Regions 1, 3-1 and 3-3. There is sufficient allocation available in these regions to accommodate the continued fishery. This regulation maintains the closure of the fishery in Region 2 East. This regulation will maintain the closure of the commercial crab fishery in Region 2 West and Region 3-2. The commercial fishery has reached its current allocation in these regions. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 8, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-52-04000E Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 1, and Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23C and 29.

(2) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1. The region includes Marine Fish-Shellfish Catch Reporting Areas 23A, and 23B.

(3) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

(4) Effective immediately, until further notice, Crab Management Region 2 East is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(5) Effective immediately, until further notice, Crab Management Region 2 West is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A West.

(6) Effective immediately, until further notice, Crab Management Region 3-2 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

### REPEALER

The following section of the Washington Administrative code is repealed effective 6:30 p.m. March 9, 2017:

WAC 220-52-04000D Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (17-28)

### WSR 17-07-050 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 17-44—Filed March 9, 2017, 4:33 p.m., effective March 10, 2017, 6:00 p.m.]

Effective Date of Rule: March 10, 2017, 6:00 p.m.

Purpose: Amend recreational fishing rules for select upper Columbia River tributaries.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close whitefish fishing in the tributaries listed because allowable impacts to Endangered Species Act listed steelhead have been reached in upper Columbia River tributaries. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-310-19500W Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective 6:00 p.m. March 10, 2017, until further notice, the following waters are closed to fishing for whitefish:

(1) **Entiat River:** From mouth (railroad bridge) to Entiat Falls.

(2) **Similkameen River:** From mouth to Enloe Dam.

(3) **Methow River:** From Gold Creek to falls above Brush Creek.

(4) **Chewuch River:** From mouth (Winthrop, WA) to Pasayten wilderness boundary falls (river mile 34.6).

**WSR 17-07-065**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-48—Filed March 14, 2017, 2:12 p.m., effective March 14, 2017,  
 2:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100M and 220-32-05100N; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Prohibits commercial sales from the winter gillnet season in the Bonneville Pool and the Zone 6 platform/hook and line fishery after 6:00 p.m. on March 17. The tribes prohibit commercial sales during the spring. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 31, February 21, March 1, and 14, 2017. Conforms state rules with tribal rules. There is insufficient time to adopt permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some

incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 2.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 14, 2017.

David Giglio  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until 6:00 p.m. March 17, 2017, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

- (1) Open Area: SMCRA 1F (Bonneville Pool):
  - (a) Season: Immediately through 6:00 p.m. March 17, 2017.
  - (b) Gear: Gill nets with no mesh restriction.
  - (c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.
- (2) Open Areas: SMCRA 1F, 1G, and 1H (Zone 6):
  - (a) Season: Immediately through 6:00 p.m. March 17, 2017.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence if harvested before March 6. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(4) Fish caught during the open period may be sold after the period concludes.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. (17-38)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 17, 2017:

WAC 220-32-05100N Columbia River salmon seasons above Bonneville Dam.

#### **WSR 17-07-071**

#### **EMERGENCY RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed March 16, 2017, 8:28 a.m., effective March 16, 2017, 8:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-845-1610 Where can respite care be provided? and 388-845-1615 Who are qualified providers of respite care?, to remove references to overnight planned respite services. Overnight planned respite services are found in chapter 388-829R WAC, Overnight planned respite services, and are provided in addition to respite services a client may receive under a waiver. This amendment corrects changes to these sections made under WSR 16-17-003 filed on August 4, 2016. The department has been working toward permanent adoption and has drafted language for proposal.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-1610 and 388-845-1615.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The department is amending WAC 388-845-1610 and 388-845-1615 to correct earlier amendments filed as WSR 16-17-003 on August 4, 2016. These updates are needed to remove references to overnight planned respite services because they are not part of a home and community-based services waiver. Overnight planned respite services are covered in chapter 388-829R WAC and are in addition to respite services a client may receive under a waiver. The department has prepared draft text for proposal and it is currently under internal and stakeholder review.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 9, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1610 Where can respite care be provided?** (1) Respite care can be provided in the following location:

- (a) Individual's home or place of residence;
- (b) Relative's home;
- (c) Licensed children's foster home;
- (d) Licensed, contracted and DDA certified group home;
- (e) Licensed assisted living facility contracted as an adult residential center;
- (f) Adult residential rehabilitation center;
- (g) Licensed and contracted adult family home;
- (h) Children's licensed group home, licensed staffed residential home, or licensed child care center; and
- (i) Other community settings such as camp, senior center, or adult day care center(~~and~~
- (j) ~~Certified overnight planned respite services home~~)).

(2) Additionally, your respite care provider may take you into the community while providing respite services.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1615 Who are qualified providers of respite care?** Providers of respite care can be any of the following individuals or agencies contracted with DDA for respite care:

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family homes;
- (5) Licensed and contracted adult residential care facilities;
- (6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;
- (7) Licensed child care centers under chapter 170-295 WAC;
- (8) Licensed child day care centers under chapter 170-295 WAC;
- (9) Adult day care providers under chapter 388-71 WAC contracted with DDA;
- (10) Certified provider under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; or
- (11) ~~((Certified overnight planned respite services providers under chapter 388-829R WAC; or~~
- (12)) Other DDA contracted providers such as community center, senior center, parks and recreation, summer programs.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 20, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-312-06000A Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-312-060 and WAC 220-316-010, effective March 25, 2017, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to John Day Dam. Catch and release is permissible except from May 1, 2017, until further notice, in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles and in the sturgeon spawning Sanctuary located from John Day Dam downstream 2.4 miles.

**WSR 17-07-083  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-47—Filed March 20, 2017, 9:42 a.m., effective March 25, 2017]

Effective Date of Rule: March 25, 2017.

Purpose: Amend Columbia River recreational fishing rules for sturgeon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close waters of the Columbia River and tributaries from Bonneville Dam upstream to John Day Dam because the harvest guidelines for both pools are expected to be reached by the effective date of this rule. There is insufficient time to adopt permanent rules.

**WSR 17-07-084  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-46—Filed March 20, 2017, 9:43 a.m., effective April 2, 2017]

Effective Date of Rule: April 2, 2017.

Purpose: Amend recreational fishing rules for Lincoln Park Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-02000A; and amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to close Lincoln Park Pond prior to the annual kid's fishing derby which is scheduled for Saturday, April 8, 2017. Closing the pond for the week preceding the derby will allow cleaning and preparation of the area around the pond, while

protecting the trout to be planted as they acclimate during the week prior to the derby which will provide angling opportunity. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 20, 2017.

David Giglio  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-02000A Freshwater exceptions to statewide rules—Coast.** Notwithstanding the provisions of WAC 220-312-020, effective April 2 through April 7, 2017, it is unlawful to fish in the waters of Lincoln Park Pond (Clallam County).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 8, 2017:

WAC 220-312-02000A Freshwater exceptions to statewide rules—Coast.

**WSR 17-07-085  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-52—Filed March 20, 2017, 9:47 a.m., effective March 21, 2017, 8:00 a.m.]

Effective Date of Rule: March 21, 2017, 8:00 a.m.

Purpose: Amend fishing rules for the Puget Sound commercial crab fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000E; and amending WAC 220-340-420 and 220-340-455.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation reopens the Region 3-2 fishery starting March 21 through 24 for the remaining 45,000 pounds of state allocation that remains. This rule will keep the commercial crab harvest open in Regions 1, 3-1 and 3-3. There is sufficient allocation available in these regions to accommodate the continued fishery. This regulation maintains the closure of the fishery in Region 2 East. This regulation will maintain the closure of the commercial crab fishery in Region 2 West. The commercial fishery has reached its current allocation in that region. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 20, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-340-42000A Commercial crab fishery—Unlawful acts.** Notwithstanding the provisions of WAC 220-340-420:

(1) Effective at 8:00 AM, Tuesday, March 21, 2017, until 7:00 PM, Friday, March 24, 2017, it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license per buoy tag number in Crab Management Region 3-2. This region includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

(2) Effective at 7:01 PM, Friday, March 24, 2017, Crab Management Region 3-2 is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

(3) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 1, and Region 3-3. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23C and 29.

(4) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1. The region includes Marine Fish-Shellfish Catch Reporting Areas 23A, and 23B.

(5) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

(6) Effective immediately, until further notice, Crab Management Region 2 East is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(7) Effective immediately, until further notice, Crab Management Region 2 West is CLOSED. This region includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A West.

#### NEW SECTION

**WAC 220-340-45500A Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455:

(1) Effective at 8:00 AM, Tuesday, March 21, 2017, until 7:00 PM, Friday, March 24, 2017, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

#### REPEALER

The following section of the Washington Administrative code is repealed effective 7:59 AM, Tuesday March 21, 2017:

WAC 220-52-04000E Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (17-45)

**WSR 17-07-097  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-55—Filed March 20, 2017, 4:40 p.m., effective March 20, 2017, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000X; and amending WAC 220-358-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Adds additional days to the winter season in Tongue Point and Knappa Slough select areas. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 31 and March 20, 2017. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 20, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-358-03000A Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

### (1) Deep River Select Area

(a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through March 28, 2017. Spring Season: Open hours are 7 PM to 7 AM Tuesday and Thursday nights from April 20 through April 28, 2017 and Monday and Thursday nights from May 1, 2017, until further notice.

(b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-354-010)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-305-010)(17).

(d) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transporta-

tion permit by WDFW staff. **During the winter season, fishers are required to call 360-795-0319** to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

### (2) Tongue Point/South Channel

(a) **Dates:** Winter Season: Wednesday March 22, 2017 from 3 PM to 7 PM.

Spring Season: Open Thursday night April 20 from 2 PM to 6 PM. Open 7 PM to 7 AM on: Tuesday night April 25 and Thursday night April 27, 2017, then Monday and Thursday nights from May 1, 2017, until further notice.

(b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

(d) **Miscellaneous:** Permanent transportation rules in effect.

### (3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Winter Season: Open hours are 7 PM to 7 AM. Open Monday and Thursday nights immediately through March 31, 2017.

Spring Season: Open hours are 7 PM to 7 AM. Open Tuesday and Thursday nights from April 20 through April 28, 2017 and Monday and Thursday nights from May 1, 2017, until further notice.

(b) **Area:** Winter season: Knappa Slough is open 7 PM to 7 AM March 20-21 and 23-24, 2017. Blind Slough is open March 20 through March 31, 2017. Spring season: Blind Slough and Knappa Slough areas are both open. From May 1, 2017, until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

(c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

(d) **Miscellaneous:** Permanent transportation rules in effect.

(4) **Allowable Possession:** Salmon and shad

(5) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-352-180 (14)(d)). Permanent transportation rules in effect.

(6) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)).

(7) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000X Columbia River seasons below Bonneville.

## WSR 17-07-107

### EMERGENCY RULES DEPARTMENT OF

### LABOR AND INDUSTRIES

[Filed March 21, 2017, 10:22 a.m., effective March 21, 2017, 10:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule provides for the issuance of temporary permits in lieu of certificates of competency for electricians coming from another state as authorized by RCW 19.28.231, and allows for Canadian Red Seal endorsed journey person construction electricians to qualify for the Washington journey level electrician competency examination once they have possessed a Red Seal endorsement for one year. An initial emergency rule (WSR 16-23-129) and CR-101 preproposal statement of inquiry (WSR 16-23-128) were filed on November 21, 2016. This rule making renews the emergency rules while the permanent rule-making process continues.

Citation of Existing Rules Affected by this Order: Amending WAC 296-46B-945.

Statutory Authority for Adoption: RCW 19.28.251.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There is an increase in construction projects in the state and a shortage of journey level electricians to meet the demand. According to the Bureau of Labor Statistics, the national job outlook for electricians is projected to grow fourteen percent from 2014 to 2024, which is much faster than the average for all occupations. The impacts of the shortage of qualified electricians include: Companies turning down work they would otherwise be able to perform because they do not have a sufficient number of workers; delays in starting new construction projects; current construction projects taking longer to complete resulting in cost overruns; public safety risks associated with the possibility that electrical trainees could work without adequate supervision and that unlicensed electrical work could be conducted.

To help address these issues, the emergency rule provides for the issuance of temporary permits in lieu of certificates of competency for electricians coming from another state as authorized by RCW 19.28.231. Under the emergency rule, electricians who have completed an equivalent state regulated four year journey level electrical apprenticeship program or possess an equivalent journey level electrician certificate obtained by examination in another state and can meet the requirements under RCW 19.28.181 are eligible for a temporary permit. The temporary electrician permit is only valid for ninety days and is not renewable. A temporary electrician can only work under the permit on jobsites where a general electrical contractor licensed in Washington state has requested and received permission to employ temporary electricians from the department's chief electrical inspector. General electrical contractors are required to regularly report the status of temporary electricians.

In addition, the emergency rule allows for Canadian Red Seal endorsed journey person construction electricians to qualify for the Washington journey level electrician competency examination if they have possessed a Red Seal endorsement for one year. In order to obtain the Canadian Red Seal endorsement, individuals must have at least four years of electrical construction training and have successfully completed a Red Seal examination. Obtaining and possessing the Red Seal endorsement for one year meets or exceeds the electrical competency examination eligibility requirements in RCW 19.28.191.

The department consulted with the electrical board, which supports the adoption of emergency rules to address the issues identified above. The department filed emergency rules on November 21, 2016 (WSR 16-23-129). On this same day, the department also filed the preproposal statement of inquiry (CR-101) to initiate permanent rule making (WSR 16-23-128). The department is still working with stakeholders to develop the proposed language for the permanent rule making so a second emergency rule is needed to address the issue described above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 21, 2017.

Joel Sacks  
Director

## NEW SECTION

### **WAC 296-46B-938 Temporary electrician permits.**

#### **General.**

(1) In lieu of certificate of competency requirements in WAC 296-46B-940(3), the department may issue temporary electrician permits to work in the electrical construction trade.

(2) The department will deny application of a temporary electrician permit if an individual owes money as a result of an outstanding final judgment(s) to the department.

(3) Temporary permits are not allowed for master electricians or specialty electricians.

#### **Temporary electrician permits when coming from out-of-state.**

(4) An individual coming from out-of-state must make application and receive approval for a temporary electrician permit to work in the electrical construction trade in the state, or otherwise obtain an electrician certificate of competency.

(a) If an individual can present appropriate evidence of experience in another state similar to RCW 19.28.181 and has completed an equivalent state regulated four-year journey level electrical apprenticeship program or possesses an equivalent journey level electrician certificate obtained by examination in that state, the department will issue an individual a nonrenewable temporary electrician permit valid for ninety days from the original date of issue.

(b) To qualify for a temporary electrician permit, an individual must:

(i) Submit a combined application for a temporary electrician permit and journey level electrician examination using a form prescribed by the department and pay an application fee of one hundred twenty-four dollars (includes original certificate, permit and application processing fee) (sixty-two dollars is nonrefundable after application is submitted); and

(ii) Provide proof of following:

(A) Completion of an equivalent state regulated four-year journey level electrical apprenticeship program in the form of a notarized letter from the apprenticeship training director or state apprenticeship authority stating that they have completed such a program; or

(B) Issuance of an equivalent journey level electrician certificate obtained by examination in another state in the form of a notarized letter from a state licensing authority verifying certification and indicating the number of hours of

supervised work experience in the electrical construction trade under direct supervision of a licensed electrician in that state verified in order to qualify for the certification.

(iii) For individuals with an equivalent journey level electrician certificate issued with the verification of less than eight thousand hours of supervised work experience in the electrical construction trade under direct supervision of a licensed electrician, provide appropriate evidence showing work experience equivalent to the eight thousand hours required by RCW 19.28.191.

(iv) For individuals with an equivalent journey level electrician certificate, provide appropriate evidence of the completion of at least ninety-six hours of in-class training on the National Electrical Code, basic electrical theory or the use of the Washington electrical laws and rules.

(c) The applicant must have never possessed a Washington journey level master electrician or journey level electrician certificate of competency or temporary electrician permit.

(d) The applicant must have never failed a Washington journey level electrician certification examination.

(5) A temporary electrician permit is valid only when employed by the contractor named on the temporary electrician permit on a job site where the contractor has received permission to employ temporary electricians from the chief electrical inspector.

(6) If a temporary electrician permit becomes invalid, it will not be extended or renewed.

(7) Temporary electricians are not eligible to supervise electrical trainees.

(8) To work in the electrical construction trade, temporary electricians must possess, wear, and visibly display on the front of the upper body, a valid temporary electrician permit issued by the department.

The permit may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The permit must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The permit may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The permit must be immediately available for examination at all times.

Any person working as a temporary electrician must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

#### **Employing temporary electricians.**

(9) Only (01) general electrical contractors are eligible to employ temporary electricians.

(10) Before employing temporary electricians on a job site, an electrical contractor must submit a request in the form of an application prescribed by the department and receive approval from the chief electrical inspector.

(11) A copy of the approval letter to employ temporary electricians must be posted conspicuously at the approved job site and be available to the department and any other authority having jurisdiction.

(12) Approval to employ temporary electricians is limited to the job site address named on the approval letter.

(13) Every fourteen days, beginning on the date of approval to employ temporary electricians on a job site, electrical contractors must report the status of all temporary electricians in their employ on that job site to the chief electrical inspector at: ElectricalProgram@lni.wa.gov. The report must contain:

- (a) The submitter's business name;
- (b) The submitter's electrical contractor's license number;
- (c) The job site name and address; and
- (d) Each temporary electrician's name, permit number, date of hire, and permit expiration date.

A current copy of this report must be posted conspicuously at the job site and available to the department and any other authority having jurisdiction.

**AMENDATORY SECTION** (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

**WAC 296-46B-945 Qualifying for master, journey level, specialty electrician examinations.** (1) General.

- (a) All applicants must be at least sixteen years of age.
- (b) All applicants, from in or out of state, must demonstrate the completion of basic trainee classes described in WAC 296-46B-970 (4)(c)(ii)(D).
  - (i) Twenty-four hours where two thousand or more; but less than four thousand hours of work experience is required.
  - (ii) Forty-eight hours where four thousand or more; but less than six thousand hours of work experience is required.
  - (iii) Seventy-two hours where six thousand or more; but less than eight thousand hours of work experience is required.
  - (iv) Ninety-six hours where eight thousand or more of work experience is required.

**Qualifying for the master electrician examination.**

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1)(d) or (e).

**Qualifying for the master electrician examination from out-of-state.**

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

**Qualifying for the journey level electrician competency examination.**

(4) An individual may take the journey level electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journey level, or specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journey level electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:

(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journey level electrician or journey level electrician while working for a general electrical contractor; and

(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).

(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journey level or journey level electrician in the proper ratio, per RCW 19.28.161; or

(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journey level electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journey level electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.

Electrical construction training hours gained in specialties requiring less than two years (i.e., four thousand hours) will not be credited towards qualification for journey level electrician.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship graduation certificates used to verify eligibility for the examination.

**Qualifying for a specialty electrician certificate of competency or examination.**

(5) After review and approval by the department, an individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journey level electrician, journey level electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination <sup>(4)(5)</sup>	Minimum Hours of Work Experience Required for Certification
Residential certificate <b>(02)</b>	4,000 <sup>(3)</sup>	4,000
Pump and irrigation certificate <b>(03)</b>	4,000 <sup>(3)</sup>	4,000
Domestic pump certificate <b>(03A)</b>	720 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Signs certificate <b>(04)</b>	4,000 <sup>(3)</sup>	4,000
Limited energy system certificate <b>(06)</b>	4,000 <sup>(3)</sup>	4,000
HVAC/refrigeration system certificate <b>(06A)</b>	4,000 <sup>(3)</sup>	4,000 <sup>(7)</sup>
HVAC/refrigeration - Restricted <b>(06B)</b>	1,000 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Nonresidential maintenance certificate <b>(07)</b>	4,000 <sup>(3)</sup>	4,000
Nonresidential lighting maintenance and lighting retrofit certificate <b>(07A)</b>	720 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Residential maintenance certificate <b>(07B)</b>	720 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Restricted nonresidential maintenance certificate <b>(07C)</b>	1,000 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Appliance repair certificate <b>(07D)</b>	720 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Equipment repair certificate <b>(07E)</b>	1,000 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>
Door, gate, and similar systems certificate <b>(10)</b>	720 <sup>(1)(2)</sup>	2,000 <sup>(6)</sup>

## Notes:

- (1) Until the examination is successfully completed, the trainee must work under one hundred percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.
- (2) The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a seventy-five percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.
- (3) This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.
- (4) The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.
- (5) Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)(g)(ii).
- (6) Electrical construction training hours gained in specialties requiring two thousand hours or less for certification will not be credited towards qualification for journey level electrician or any of the four thousand hour specialties, except as allowed by <sup>(7)</sup>, below.
- (7) The two thousand minimum hours of work experience required for certification as an HVAC/refrigeration-restricted **(06B)** specialty electrician may be credited as two thousand hours towards the four thousand minimum hours of work experience required for certification as an HVAC/refrigeration **(06A)** specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted **(06B)** specialty cannot be credited towards qualification for taking the general electrician **(01)** examination or minimum work experience requirements.
- (8) Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1)(g)(iv).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

(6) After review and approval by the department, an individual may be granted work experience credit to take the journey level/specialty electrician's competency examination when an original notarized letter of work experience accom-

panied by verifiable documentation is provided. - See subsection (7) of this section.

For the purposes of this section, exempt work does not include work performed on property owned, in whole or part, by the individual seeking credit.

All exempt individuals must have a valid electrical training certificate when working to gain electrical work experience.

Work experience requested by an individual for telecommunications work must be gained while working for **(01)** general electrical, **(02)** residential, or **(06)** limited energy system electrical contractors as allowed by those scopes of work. When the work was performed, the individual must have a

valid training certificate, be under the supervision of an appropriately certified journey level, residential or limited energy electrician, and be in compliance with RCW 19.28.191.

**General - Qualifying hours gained by applicants seeking work experience credit without a Washington electrician training certificate.**

(7) The type of on-the-job work experience must be similar to the credit being applied for and lawfully gained in the state or other entity where the work was performed. The individual must submit verifiable documentation (e.g., payroll, time sheets, permits, supervision, etc.) that the department may use to ascertain the type of work performed and the number of hours worked for each type (i.e., specialty) of work.

Training hours credited for specialties requiring less than two years (i.e., four thousand hours) may not be credited towards qualification for general journey level electrician.

The documentation must include a complete description of the individual's usual duties with percentages attributed to each type (e.g., wiring, material handling, shop, low voltage, etc.)

The department may reduce the number of hours allowed if the:

- (a) Individual did not have supervision during the training period;
- (b) Training hours are not related to electrical construction;
- (c) Training hours are not related to the specialty being applied for;
- (d) Documentation submitted by the individual does not fully verify the requested work experience; or
- (e) Work credit was not lawfully gained.

**Training school credit.**

(8) No more than fifty percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring two thousand hours of minimum required work experience may receive no more than one thousand hours credit from an electrical construction training program).

See RCW 19.28.191 (1)(h) for training school credit allowed for journey level applicants.

See WAC 296-46B-971 for additional information on training schools.

**Qualifying for the journey level/specialty electrician competency examination when work was performed in a state requiring electrician certification.**

(9) After review and approval by the department, an individual may be granted on-the-job work experience towards qualifying to take the journey level/specialty electrician's competency examination for hours worked in the other state when the state certifies to the department:

(a) The type and number of hours of work performed within the state. Credit will not be allowed for work not done within the certifying state.

(b) That the work was legally performed under the other state's licensing and certification requirements; and

(c) The other state's certificate of competency was obtained by examination.

If the experience is for other than a new commercial or industrial installation, the individual must identify the specialty credit desired and provide verifiable documentation identifying the other state's allowed scope of work for the specialty, see subsection (7) of this section.

**Qualifying for the journey level/specialty electrician competency examination when work was performed in a state that does not require electrician certification.**

(10) After review and approval by the department, an individual may be granted work experience credit to take the journey level/specialty electrician's competency examination when an original notarized letter of work experience accompanied by documentation, see subsection (7) of this section, that can be used to verify the individual has worked the hours being requested is provided by:

- (a) An appropriately state licensed electrical contractor;
  - (b) Registered apprenticeship training director;
  - (c) Nationally recognized contractor/labor organization;
- or
- (d) The individual's lawful employer.

**Military/shipyard experience.**

(11) After review and approval by the department, an individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a journey level or specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than fifty percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

**Experience in ((another country)) other countries.**

(12) After review and approval by the department, and if an individual has a journey level electrician certificate from a country outside the United States or Canada that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journey level electrician examination.

No more than two years of the required training to become a Washington journey level electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of four

thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a master journey level electrician or journey level electrician.

Documentation substantiating the individual's out of country experience must be submitted in English.

(13) Out of country experience credit is not allowed toward a specialty electrician certificate.

(14) Canadian journey person construction electricians with at least four years of electrical construction training who have obtained a construction electrician Red Seal endorsement by successfully completing a Red Seal examination are eligible to take the examination for the journey level electrician certificate of competency if they have possessed a Red Seal endorsement for one year.

**WSR 17-07-120**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-50—Filed March 21, 2017, 3:57 p.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: Amend recreational fishing rules for Bowers Lake (Vance Creek Pond).

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-02000B; and amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency regulation is needed to allow an early fishing opportunity in waters of Bowers Lake (Vance Creek Pond #1) for juveniles, seniors, and anglers with a disability who possess a department of fish and wildlife designated harvester card. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 21, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-312-02000B Exceptions to statewide rules—Bowers Lake (Vance Creek Pond #1) Grays Harbor Co.** Notwithstanding the provisions of WAC 220-312-020, effective April 1 through April 9, 2017, juveniles, holders of a senior license, and anglers with Washington Department of Fish and Wildlife disability status and who have a designated harvester card may fish in those waters of Bowers Lake (Vance Creek Pond #1).

REPEALER

The following section of the Washington Administrative Code is repealed effective April 10, 2017:

WAC 220-312-02000B Exceptions to statewide rules—  
Bowers Lake (Vance Creek Pond  
#1) Grays Harbor Co.

**WSR 17-07-121**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-51—Filed March 21, 2017, 3:58 p.m., effective April 15, 2017, 8:00 a.m.]

Effective Date of Rule: April 15, 2017, 8:00 a.m.

Purpose: Amend recreational fishing rules for Failor Lake kids-only fishing derby.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-312-02000C; and amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency rule is needed to open Failor Lake which will allow boys and girls fourteen and younger to participate in a fishing derby hosted by the Grays Harbor Poggie Club. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 21, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-02000C Exceptions to statewide rules—Failor Lake (Grays Harbor Co.)** Notwithstanding the provisions of WAC 220-312-020, Failor Lake is open to fishing on April 15, 2017, from 8:00 a.m. through 12:00 p.m. for anglers age fourteen years old and younger who are participating in the youth fishing event. Adults may assist children participating in the event, but no child may fish with more than one fishing rod. All other provisions of the permanent rule remain in effect.

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 p.m. April 15, 2017:

WAC 220-312-02000C Exceptions to statewide rules—  
Failor Lake (Grays Harbor Co.)

**WSR 17-07-123  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-56—Filed March 21, 2017, 4:25 p.m., effective March 21, 2017, 4:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational harvest rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-330-16000A; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency rule is needed to open razor clam beaches for recreational harvest because

survey results show that adequate clams are available for harvest in Razor Clam Areas 4 and 5 which will provide for recreational harvest opportunity. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 21, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-330-16000A Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-360-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. March 25, 2017 through 11:59 p.m. March 25, 2017 razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(2) Effective 12:01 p.m. March 24, 2017 through 11:59 p.m. March 24, 2017 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. only. Effective 12:01 p.m.

(3) March 26, 2017 through 11:59 p.m. March 26, 2017 razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. only.

(4) It is unlawful to dig for razor clams at any time in the Twin Harbors or Copalis Clam sanctuaries defined in WAC 220-320-130.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 27, 2017:

WAC 220-330-16000A Razor clams—Areas and seasons.

**WSR 17-07-127**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-54—Filed March 22, 2017, 11:19 a.m., effective April 1, 2017]

Effective Date of Rule: April 1, 2017.

Purpose: Amend recreational harvest rules for hardshell clams.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-330-120.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency regulation removes the exception to the statewide minimum size limit for clams at Quilcene Bay Tidelands. The smaller minimum size of 1-1/4 inches was in place because historically clams on the public tidelands in Quilcene Bay tended to be stunted and did not often reach the standard minimum harvest size of 1-1/2 inches. Changing ecology, likely related to a decrease in oyster biomass on the Quilcene Bay Tidelands, has resulted in more normal growth patterns for Manila clams at this location. State and tribal comanagers have agreed that the smaller minimum size restriction for clam harvest on the west side of Quilcene Bay, north of the boat ramp, is no longer necessary. There is insufficient time to promulgate a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 21, 2017.

J. W. Unsworth  
Director

1/2 inches across the longest dimension of the shell from Quilcene Bay Tidelands (west side of Quilcene Bay north of the county boat ramp).

**NEW SECTION**

**WAC 220-330-12000A Clams, oysters, mussels—Unlawful acts.** Notwithstanding the provisions of WAC 220-330-120, effective April 1, 2017, until further notice, it is unlawful to possess Manila, native littleneck, cockle, or butter clams taken for personal use which measure less than 1-